

## On Forbearance: In Praise of the Landowners who Would

Several years ago, at a planning board meeting, the son of a local developer said to an aggrieved neighbor, "My father never understood the difference between Could and Should." Meaning, just because he had the wherewithal to jam up the neighborhood with building didn't mean that he considered the impact.

I have worked in open space protection for more than 30 years and continue to be inspired by a subset of landowners who have stayed the hand of development of their family property, who practiced forbearance and moved from Could to Should. And there is an extra step to take: from Should to Would. Those who Would find a way to preserve its intact status as a natural habitat, sometimes at great opportunity cost.

The Cape and Islands are fortunate to have a cadre of open space advocates and experts in helping private landowners who Would preserve their land. Nonprofit land trusts and town open space committees consult in confidence and free of charge.

Siblings Martin and Kathryn Koessel, lifelong summer residents of Wellfleet, practiced forbearance, transferring two waterview lots into conservation status. "Money isn't everything," said Kathryn. "What's really important is knowing that the land where my brother and I spent such happy childhood summers will remain in its natural state for all time. In a fast-changing world, that is something to hold onto and cherish." The Koessels can still enjoy their youthful haunts in the woods along the marsh, and now so too can the community.

One family wished to anchor its home in the land where they have been since 1644. Marian Thomas and husband Fred honeymooned at the Eastham place in 1942 when her father was still busy restoring the forest. The couple donated land and conservation restrictions on the property in 1995. Fred said the tax benefits were nice, but "Our purpose is to preserve the land...we don't need any

pat on the back. It's nice to know it's going to be here." They knew that once it's gone, it's gone forever. Her Doanes family's ties to the land that they farmed and fished from for generations would be lost.

The term Would, however, implies a contingency. It is really a Will wrapped in an If. As in, "We will conserve this property for open space, if we can be assured that you, the land trust, will commit to preserve it for us forever." The proper role of the nonprofit land trust, then, is to respect this prime directive: beyond anything else it does, more than community outreach or removal of invasive plants or educating schoolchildren, a land trust stands by the land that has been entrusted to it.

I would argue that, on Cape Cod, we have. Not one parcel of conservation property has been deleted from local land trusts in their 55 years of operation here.

Not only that: the Cape's non-profit land trust community has pioneered the doctrine of overlay legal protection: using conservation partners to hold restrictions and arrange charitable trust protections to hold land in "a natural state for conservation purposes forever." Now, all Cape land trusts protect their landholdings with these secure overlays.

We can pioneer a generous concept with our sister regional land trust, the Native Land Conservancy. As the first nonprofit land trust governed by Native-American people east of the Mississippi, the NLC has so far acquired four small parcels of land on the Cape. NLC is also eager to partner with land trusts and private landowners on cultural respect agreements; these would ask landowners to formally allow access for non-intrusive traditional purposes, such as ceremony and education, by the NLC and its guests. The Dennis Conservation Trust has already granted such access to its 205-acre Chase Garden Creek salt marsh and surroundings. I would like to see at least one landowner or land trust in each of 15 Cape towns negotiate a cultural respect agreement with the Native Land Conservancy.

Cape Cod real estate is ever-more expensive; there is not enough money to

preserve all the woods, fields and marshes that should be kept open. We must extend and expand the spirit of generosity that inspires so many in land conservation. Be one of the special Landowners who Would.

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